

## INTRODUCTION

### RIGHTS, MOVEMENTS, AND CRITICAL TRANS POLITICS

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This book has two primary goals. First, it aims to chart the current trajectory of trans politics, one that I argue is recapitulating the limits of leftist, lesbian and gay, feminist, and antiracist politics that have centered legal recognition and equality claims. Second, it seeks to elaborate on the possibilities of what I understand as a critical trans politics—that is, a trans politics that demands more than legal recognition and inclusion, seeking instead to transform current logics of state, civil society security, and social equality. In developing this two-fold account of contemporary trans politics I aim to reveal the indispensability of trans organizing and analysis for both leftist thinking and left social movements. Additionally, I aim to address specific sites of intersection where trans activists and organizers can and are finding common cause with some of the most important political agendas of our time: police and prison abolition, wealth redistribution, and organizing against immigration enforcement. Further, I hope to show how critical trans politics practices resistance. Following the traditions of women of color feminism, this critical approach to resistance refuses to take for granted national stories about social change that actually operate to maintain conditions of suffering and disparity.<sup>1</sup> It questions its own effectiveness, engaging in constant reflection and self-evaluation. And it is about practice and process rather than a point of arrival, resisting hierarchies of truth and reality and instead naming and refusing state violence.<sup>2</sup> Various social movements have had to contend with why legal change in the form of rights has not brought the deep transformation they were seeking, why disparities in life chances have increased during a period when we have seen the elimination of formal segregation and the advent of policies prohibiting discrimination on the basis of sex, race, and disability. Before trans people sign on to what looks good about being recognized by law in ways that seem desirable

(e.g., being added to anti-discrimination and hate crime laws), we have to strongly consider why those laws have failed to provide the change that many have hoped for. We need a critical trans politics that perpetually questions its own effectiveness, that refuses to take for granted stories about what counts as change that actually maintain certain structures and categories. We need a critical trans politics that is about practice and process rather than arrival at a singular point of “liberation.” To practice this politics we have to tackle some big questions about what law is, what power is, how legal systems are part of the distribution of life chances, and what role changing laws can and cannot have in changing the arrangements that cause such harm to trans people.

Social movements engaged in resistance have given us a very different portrayal of the United States than what is taught in most elementary school classrooms and textbooks. The patriotic narrative delivered at school tells us a few key lies about US law and politics: that the United States is a democracy in which law and policy derive from what a majority of people think is best, that the United States used to be racist and sexist but is now fair and neutral thanks to changes in the law, and that if particular groups experience harm, they can appeal to the law for protection. Social movements have challenged this narrative, identifying the United States as a settler colony and a racial project, founded and built through genocide and enslavement.<sup>3</sup> They have shown that the United States has always had laws that arrange people through categories of indigeneity, race, gender, ability, and national origin to produce populations with different levels of vulnerability to economic exploitation, violence, and poverty. These counter narratives have challenged the notion that violence is a result of private individuals with bad ideas and that the state is where we should look for protection from such violence. Conversely, resistant political theorists and social movements have helped us understand the concept of “state violence,” which has been essential for exposing the central harms faced by native people, women, people of color, people with disabilities, and immigrants. They have exposed that state programs and law enforcement are not the arbiters of justice, protection, and safety but are instead sponsors and sites of violence. Additionally, this work has developed the understanding that power is decentralized and that certain practices, ways of knowing, norms, and technologies of power are distributed in myriad ways rather than only from a single person or institution. It has cautioned us against an overly narrow, simplified vision of power that sees power as a posses-

sion primarily held by government officials.<sup>4</sup> This perspective eliminates the false notion that we could win the change people need simply by using the electoral process to vote in certain representatives or pass certain laws. It helps us investigate how the norms that produce conditions of disparity and violence emerge from multiple, interwoven locations, and recognize possibilities for resistance as similarly dispersed.

When movement organizers, activists, and intellectuals use various terms that end in “industrial complex,” like “military industrial complex” or “prison industrial complex,” they are pointing to this kind of multivector analysis of law, power, knowledge, and norms. For example, the term prison industrial complex (PIC) reframes the issue of criminal punishment. It contests the dominant story that tells us that bad individuals need to be exiled to prison to keep others safe. That story casts juried trials as fair and impartial ways of determining who deserves to be punished. Instead, using the term “prison industrial complex” suggests that multiple, connected processes and forces determine how certain populations get labeled as “criminal,” how certain behaviors and actions come to be classified as crimes, how racist ideas are mobilized to justify an expansion of imprisonment systems, how various financial interests are implicated in motivating law enforcement expansion, and how criminalization and imprisonment filter through every aspect of how we live and understand ourselves and the world. Living in a society defined by criminalization and imprisonment shapes how we design and build schools and discipline kids who are perceived to misbehave. It relates to how we frame issues in the news and in entertainment media. It relates to how we run homeless services, agriculture policy, elections, and health care systems. It relates to the availability of finance capital and so much more.<sup>5</sup>

This kind of analysis helps us understand that there is not one source of power, no one person at the top dominating everyone below. Rather, there are regimes of practices and knowledge that coalesce in conditions and arrangements that affect everyone and that make certain populations highly vulnerable to imprisonment. Such an analysis also suggests that there is much work to be done to dismantle the trend of racialized-gendered mass imprisonment—in many locations, not just in legislatures, courts, or police precincts. Understanding how the forces producing imprisonment and criminalization operate at multiple sites and registers ranging from laws and policies to education, health care, social service, media, and even our own self-conceptions helps us both

account for the enormity of the significance of imprisonment and understand that addressing it is not simply a matter of appealing to one central source of power or decision-making. Power is not a matter of one dominant individual or institution, but instead manifests in interconnected, contradictory sites where regimes of knowledge and practice circulate and take hold.

This way of understanding the dispersion of power helps us realize that power is not simply about certain individuals being targeted for death or exclusion by a ruler, but instead about the creation of norms that distribute vulnerability and security. When we think about power this way, we undertake a different kind of examination of conditions that concern us, asking different questions. Mitchell Dean describes how this kind of analysis attends to

the routines of bureaucracy; the technologies of notation, recording, compiling, presenting and transporting of information, the theories, programmes, knowledge and expertise that compose a field to be governed and invest it with purposes and objectives; the ways of seeing and representing embedded in practices of government; and the different agencies with various capacities that the practices of government require, elicit, form and reform. To examine regimes of government is to conduct analysis in the plural: there is already a plurality of regimes of practices in a given territory, each composed from a multiplicity of in principle unlimited and heterogeneous elements bound together by a variety of relations and capable of polymorphous connections with one another. Regimes of practices can be identified whenever there exists a relatively stable field of correlation of visibilities, mentalities, technologies and agencies, such that they constitute a kind of taken-for-granted point of reference for any form of problematization.<sup>6</sup>

This kind of analysis can be seen in the work of those using “industrial complex” terms to describe and resist the forces of militarization and criminal punishment that pervade US society. It can also be seen in the work that is being done for disability justice. Critical disability studies and the disability rights and disability justice movements have shown us how regimes of knowledge and practices in every area of life establish norms of “healthy” bodies and minds, and consign those who are perceived to fall outside those norms to abandonment and imprisonment.<sup>7</sup> Policies and practices rooted in eugenics have attempted (and continue to attempt) to eliminate the existence of people who fall outside

those norms. Native scholars and activists have shown how white European cultural norms determine everything from what property is to what gender and family structure should look like, and how every instance of the imposition of these norms has been used in the service of the genocide of indigenous people. In these locations and many others, we can see how the circulation of norms creates an idea that undergirds conditions of violence, exploitation, and poverty that social movements have resisted—the idea that the national population (constructed as those who meet racial, gender, sexual, ability, national origin, and other norms) must be protected from those “others” (those outside of such norms) who are portrayed again and again in new iterations at various historical moments as “threats” or “drains.” This operation of norms is central to producing the idea of the national body as ever-threatened and to justifying the exclusion of certain populations from programs that distribute wealth and life chances (white schools, Social Security benefits, land and housing distribution programs) and the targeting of these same populations for imprisonment and violence (including criminal punishment, immigration enforcement, racist drug laws, sterilization, and medical experimentation). Even though norms are incorporated into various spaces and institutions inconsistently and applied arbitrarily, they still achieve the overall purpose of producing security for some populations and vulnerability for others. Many social movements have produced analyses of how various groups are harmed by the promotion of a national identity centered in norms about race, bodies, health, gender, and reproduction. These constructs often operate in the background and are presumed as “neutral” features of various administrative systems. The existence and operation of such administrative norms is therefore less visible than those moments when people are fired or killed or excluded explicitly because of their race or body type or gender, yet they sometimes produce more significant harm because they structure the entire context of life. I am going to return again and again in the chapters that follow to key examples, such as the dismantling of welfare programs and the expansion of criminal and immigration enforcement, that are central to contemporary politics and help illustrate how life chances are distributed through racialized-gendered systems of meaning and control, often in the form of programs that attest to be race- and gender-neutral and merely administrative.

Throughout this book, I use the term “subjection” to talk about the workings of systems of meaning and control such as racism, ableism,

sexism, homophobia, transphobia, and xenophobia. I use “subjection” because it indicates that power relations impact how we know ourselves as subjects through these systems of meaning and control—the ways we understand our own bodies, the things we believe about ourselves and our relationships with other people and with institutions, and the ways we imagine change and transformation. I use “subjection” rather than “oppression” because “oppression” brings to mind the notion that one set of people are dominating another set of people, that one set of people “have power” and another set are denied it. As I will argue in more detail in chapter 3, the operations of power are more complicated than that. If we seek to imagine transformation, if we want to alleviate harm, redistribute wealth and life chances, and build participatory and accountable resistance formations, our strategies need to be careful not to oversimplify how power operates. Thinking about power only as top/down, oppressor/oppressed, dominator/dominated can cause us to miss opportunities for intervention and to pick targets for change that are not the most strategic. The term “subjection” captures how the systems of meaning and control that concern us permeate our lives, our ways of knowing about the world, and our ways of imagining transformation.

For example, racism does not only occur in moments when individual people of color are excluded from employment opportunities by individual white people. Racism also occurs when media perpetuate stereotypes about people of color. Racism determines policy discussions about everything from health care to agriculture to national security. Racism shapes how individuals and communities see ourselves and understand our relationships to one another. Racism determines what schools will be well funded and which communities will be sited for toxic industry. Racism shapes how things like beauty, reason, intelligence, and enterprise are culturally defined. Racism determines who will be arrested, what public benefits programs will be cut, and what behaviors will be considered criminal. Racism does not just flow from the top down but rather permeates the entire field of action. The invention of racial categories—the “racialization” of peoples—was essential to establishing the interests in land and labor that founded the United States.<sup>8</sup> The continued maintenance and reinvention of racial categories and new sites of racialization have been essential to the distribution of wealth and life chances. Similarly, the shifting understandings of gender, ability, and migration—and the meanings attached to different populations through those shifts—

determine who lives, for how long, and under what conditions. They also frame all discussions of what resisting harmful arrangements can look like. “Subjection” is a term that tries to capture that complexity and the significance of how thoroughly our ways of living, thinking, and knowing ourselves and the world are imbued with the meanings and distributions wrought through these various categories of identity, and how multifaceted the relations of these categories are to one another.

This way of thinking about how systems of meaning and control operate helps us acknowledge how important constant self-reflection is and how essential participatory movements that center the leadership of people facing the most direct harms from systems of subjection are. This way of thinking about power and control can also help us spot traps of co-optation and incorporation that our resistance projects face. This book looks at how legal reform itself sometimes operates as one such trap.

While this book is about how power works, it is also about resistance. It is about the strategies emerging from a population often identified by its failure to meet norms associated with gender. This text proposes a politics rooted in questioning how those norms come to be and how they impact—and extinguish—the lives of trans people. It also considers how norms like these become part of the resistance itself, and proposes a trans politics that tirelessly interrogates processes of normalization by analyzing their impacts and revising its resistance strategies as it observes their unintended consequences. To do so, this book examines what relationship trans politics has to “individual rights”—the framework most frequently articulated by the demands of many contemporary social movements—and investigates other ways to conceive of law reform tactics in trans resistance that forgo the limitations of demands for individual rights.

The critical analysis built by many resistant social movements illuminates the limitations of a theory of law reform that aims to punish the “few bad apples” supposedly responsible for racism, sexism, ableism, xenophobia, or transphobia. It also helps us understand why, since US law has been structured from its inception to create a racialized-gendered distribution of life chances that perpetuates violence, genocide, land theft, and exploitation, we will not resolve those issues solely by appealing to law. We must also be cautious not to believe what the law says about itself since time and again the law has changed, been declared

newly neutral or fair or protective, and then once more failed to transform the conditions of disparity and violence that people were resisting. Given the insights gleaned from social movements that have wrangled with violent legal regimes and with law reform strategies, this book aims to think through how a critical trans politics might conceptualize the role of law reform in our resistance struggles. If we refuse to believe what the law says about itself, if we understand that power does not operate through the domination of a central figure or institution over the masses but is instead diverse, multifaceted, and decentralized, and if we realize that the transformation needed to address the kinds of conditions I described in the preface will not, and cannot, come through law, how do we engage with legal reform?

I argue that because laws operate as tactics in the distribution of life chances that concern us, we must approach law reform tactically. Meaningful transformation will not occur through pronouncements of equality from various government institutions. Transformative change can only arise through mass mobilization led by populations most directly impacted by the harmful systems that distribute vulnerability and security. Law reform tactics can have a role in mobilization-focused strategies, but law reform must never constitute the sole demand of trans politics. If we seek transformation that is more than symbolic and that reaches those facing the most violent manifestations of transphobia, we must move beyond the politics of recognition and inclusion.

This book places the rise of discourse about trans identities and advocacy for trans recognition in the context of broader political and economic developments—some mainstays of a late 20th-century political economy and other more recent transformations of state and civil society including the emergence of a neoliberal global economy, the War on Terror, the rollback of 1960s and '70s welfare state and civil rights gains, the rise of the nonprofit industrial complex (NPIC), the rapid growth of imprisonment, and the ascendancy of a lesbian and gay rights agenda articulated through liberal notions of privacy and equal opportunity. These political and economic changes must be considered in order to fully understand the conditions shaping trans resistance. In the face of increasing disparities in wealth and life chances domestically and globally, what do promises of “anti-discrimination” or “equal opportunity” actually deliver? What might trans law reformers learn from social movements that have won formal legal protections but whose constituencies remain criminalized and economically marginalized? And how can such critical,



historical analysis help reconceptualize the role of law and rights in trans resistance struggles?

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*Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* raises questions about the usefulness of the most commonly articulated legal interventions for transgender rights: anti-discrimination laws and hate crime laws. It asserts that a different location within the law—the administrative realm—may be the place to look for how law structures and reproduces vulnerability for trans populations. I argue that the anti-discrimination/hate crime law strategy actually misunderstands how power works and what role law has in the functions of power. The anti-discrimination/hate crime law strategy relies on the belief that if we change what the law says about a particular group to make it say “good things” (e.g., creating laws that say you are not allowed to fire someone just because they are trans) and not “bad things” (e.g., eliminating laws that explicitly criminalize people for cross-dressing or having certain kinds of sex) then those people’s lives will improve. This approach to law reform relies on an individual rights framework that emphasizes harms caused to individuals by other individuals who kill or fire them because they are members of the group. It seeks remedies that punish individuals who do those harmful things motivated by bias. This analysis misunderstands how power functions and can lead to approaches to law reform that actually expand the reach of violent and harmful systems. In order to properly understand power and transphobic harm, we need to shift our focus from the individual rights framing of discrimination and “hate violence” and think more broadly about how gender categories are enforced on all people in ways that have particularly dangerous outcomes for trans people. Such a shift requires us to examine how administrative norms or regularities create structured insecurity and (mal)distribute life chances across populations. This attention to the distribution of life chances acknowledges that even when laws are changed to say different things about a targeted group, that group may still experience disproportionate poverty as well as lack of access to health care, housing, and education. Those law reforms do nothing to prevent violences like criminalization and immigration enforcement. Legal systems that have official rules of nondiscrimination still operate in ways that disadvantage whole populations—and this is not due solely, or even primarily, to individual bias.

I argue for a model of thinking about power and law that expands our analysis to examine systems that administer life chances through purportedly “neutral” criteria, understanding that those systems are often locations where racist, sexist, homophobic, ableist, xenophobic, and transphobic outcomes are produced. Through this lens, we look more at impact than intent. We look more at what legal regimes do rather than what they say about what they do. We look at how vulnerability is distributed across populations, not just among individuals. This allows us to shape resistance strategies that have a better chance at actually addressing the conditions that concern us, rather than just changing the window-dressing that attends them.

While there are a number of critical paradigms for evaluating legal equality, this book emerges out of the space opened by Critical Race Theory’s comprehension of the paradox of rights: rights mediate emergent social groups, and rights claims often serve as the resistance framework of such groups, yet declarations of universal rights often actually mask and perpetuate the structured conditions of harm and disparity faced by those groups. Critical Race Theory is an intellectual movement that emerged in the late 1980s that studies and seeks to transform the relationship between race and the structures of contemporary society, including the law.

Key thinkers in the Critical Race Theory field such as Derek Bell, Kimberlé Crenshaw, and Cheryl Harris have made arguments that have rocked legal scholarship at its roots. They have critiqued the law reforms of the civil rights movement, suggesting that those reforms did not sufficiently alter conditions facing people of color, and arguing that racism is inherent in US law. Derek Bell’s “interest-convergence” theory asserts that “[t]he interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites.”<sup>9</sup> This argument suggests that those interested in ending white supremacy must look critically at purported legal victories, recognizing that they are often merely adjustments that maintain systems of control and maldistribution. Cheryl Harris’s article “Whiteness as Property” exposed how US property law is rooted in racialized property statuses that attend chattel slavery, genocide, and land theft, and how US law has continued to produce whiteness as a form of property at the expense of people of color.<sup>10</sup> Kimberlé Crenshaw’s theory of “intersectionality” has significantly influenced scholarship and social movements far outside of law schools.<sup>11</sup> Her work argues that people who experience multiple vectors of subjec-

tion, for example racism and sexism, face unique harms not captured by racial justice movements that use male experience as the norm or feminist movements that use white women's experience as the norm. These works, and other key interventions made by critical race theorists, have inspired critical scholars in law and many other fields to examine the operations of law and racialization from new perspectives.

*Normal Life* draws from the insights of Critical Race Theory and also modifies and reworks these insights for the specificities of a critical trans analysis. Critical Race Theory has identified the barriers that dominant legal models of intentional discrimination—with their focus on punishing individual discriminators—have created to solve subordination. It has also drawn attention to the distributive functions of law, providing solutions that avoid the liberal pitfall of individualizing conceptions of both oppressors and victims. *Normal Life* takes up this approach and expands its analysis further into the domain of administrative law in order to illustrate how modes of administrative governance produce what we come to think of as natural or pre-existing identities. This book argues that rather than looking to the typical areas of “equality law” such as anti-discrimination law or hate crime law to inquire about and intervene in harm facing targeted and vulnerable populations, we should look at the administrative governance that typically comes from state agencies like departments of Health, Motor Vehicles, Corrections, Child Welfare, and Education, and federal agencies like the Customs and Border Protection, US Immigration and Customs Enforcement (ICE), the Bureau of Indian Affairs, the Bureau of Prisons, the Food and Drug Administration, and the Environmental Protection Agency. Rather than understanding administrative systems merely as responsible for sorting and managing what “naturally” exists, I argue that administrative systems that classify people actually invent and produce meaning for the categories they administer, and that those categories manage both the population and the distribution of security and vulnerability. Such an analysis allows us to reframe trans politics in terms of the distribution of life chances and brings us to new and different questions about why trans people suffer from economic marginalization, criminalization, and deportation, and what can be done about it.

*Normal Life* asks us to redirect attention away from recognition-and-inclusion-focused law reforms that are often assumed to be the natural legal reform targets of trans resistance, perhaps because they have been the targets of gay and lesbian legal reform. Rather than a focus on changing

the law in ways that are supposed to declare the equality and worth of trans people's lives but in fact prove to have little impact on the daily lives of the people they purportedly protect, a distributive analysis suggests a focus on laws and policies that produce systemic norms and regularities that make trans people's lives administratively impossible. I will specifically discuss three areas of law and policy that have a very significant impact on trans people's lives: rules that govern gender classification on ID, rules that govern sex-segregation of key institutions (shelters, group homes, jails, prisons, bathrooms), and rules that govern access to gender-confirming health care for trans people.<sup>12</sup> This book reconceptualizes the role of law reform in trans resistance strategies, arguing against a focus on what the law says about trans people and for a focus on intervening in the law and policy venues that most directly impact the survival of trans people as part of a broader trans politics whose demands are not limited to formal legal equality. By exposing the limits of formal legal equality and examining the conditions facing trans communities, this book brings us to the larger question of whether legal recognition and inclusion are felicitous goals for trans politics. It suggests that such goals undermine the disruptive potential of trans resistance and also threaten to divide potential alliances among trans people, such as cross-race, cross-class, and cross-ability alliances, as they have in lesbian and gay politics. Legal equality goals threaten to provide nothing more than adjustments to the window-dressing of neoliberal violence that ultimately disserve and further marginalize the most vulnerable trans populations. As an alternative, the book proposes a politics based upon the so-called impossible worldview of trans political existence. Such a politics builds from the space created by the insistence of government agencies, social service providers, media, and many nontrans activists and nonprofits that the existence of trans people is impossible and/or that our issues are not politically viable. *Normal Life* suggests these challenges are potential starting points for a trans politics that openly opposes liberal and neoliberal agendas and finds solidarity with other struggles articulated by the forgotten, the inconceivable, the spectacularized, and the unimaginable. Finding overlap and inspiration in the analysis and resistance articulated through women of color feminism, disability justice politics, prison abolition, and other struggles against colonialism, criminalization, immigration enforcement, and capitalism has far more to offer trans people. Developing this framework for our resistance will also contribute trans understandings of necessary analyti-

cal, strategic, and tactical tools and models to other emerging formations that are struggling to formulate resistance to neoliberalism in these complex and difficult times.

Chapter 1, “Trans Law and Politics on a Neoliberal Landscape,” introduces the central concern of this book: what does or could trans politics mean in the current political context and how should we understand strategies for trans legal reform in these times? To begin that inquiry, I describe the set of trends organized under the term “neoliberalism,” including policy changes like privatization, trade liberalization, labor and environmental deregulation, the elimination of health and welfare programs, increased immigration enforcement, and the expansion of imprisonment. These forces, together, have contributed to an overall upward distribution of wealth and drastically decreased life chances for poor people.<sup>13</sup> The hallmarks of neoliberalism are co-optation and incorporation, meaning that the words and ideas of resistance movements are frequently recast to produce results that disserve the initial purposes for which they were deployed, and instead become legitimizing tools for white supremacist, capitalist, patriarchal, ableist political agendas.<sup>14</sup> These trends have had significant impacts on social movements in the United States, harming their constituents and undermining the effectiveness of their resistance. In the last three decades we have seen a massive growth in imprisonment, a dismantling of our social safety nets, decreasing job security, a rollback of 1960s civil rights gains, and the advent of the War on Drugs and the War on Terror, both of which shifted massive public resources toward racist surveillance and increased criminalization of poor people and people of color.<sup>15</sup> At the same time, the ability of social movements to respond to these changes has been hampered by the drastic consolidation of the corporate media, wealthy philanthropists’ control over movement agendas through the nonprofitization of activism, the abandonment of essential poverty alleviation programs and social services by local, state, and federal governments, and the targeted dismantling of the most important movements of the 1960s and 1970s by the Federal Bureau of Investigation (FBI).<sup>16</sup>

In the context of these trends, activists and scholars have observed that many social movements have become more conservative, abandoning goals of radical redistribution and taking up agendas that fit more closely with neoliberal ideas.<sup>17</sup> Lesbian and gay rights work has received a great deal of critique on this front as it has drifted toward a legal rights agenda (anti-discrimination protections, marriage rights, and military inclusion)

that provides little redress for the growing numbers of people confronting reduced life chances in the face of an increasing wealth divide, growing criminalization and immigration enforcement, and endless war. As trans activism has emerged more visibly, and trans populations have increasingly described experiences of economic marginalization and criminalization, an important set of questions has emerged. Should trans activism follow the strategies, deemed “successful” by some, of the lesbian and gay legal reform agenda? For which trans people would such strategies win gains and for whom might they worsen conditions? This book argues that we must depart from the models created by most well-funded lesbian and gay rights nonprofits, and proposes an approach aimed at producing resistance that will actually address the criminalization, poverty, and violence that trans people face every day.

Chapter 2, “What’s Wrong with Rights?,” examines the most common legal interventions taken up in the struggle for trans rights thus far: gender identity-inclusive anti-discrimination and hate crime laws. These strategies have been marketed by the most well-funded lesbian and gay legal reform organizations as the benchmarks of trans equality and the key aims of the trans component of the emergent “LGBT” politics. Chapter 2 analyzes the limitations of these two reforms, examining why the campaigns that have been deemed successful in these areas have not sufficiently improved the lives of trans people. Anti-discrimination laws have failed to address the legal issues that create the greatest vulnerabilities for trans people: criminalization, immigration enforcement, lack of access to ID that reflects current gender, placement in sex-segregated facilities (bathrooms, shelters, residential treatment programs), and exclusions of gender-confirming health care for trans people from Medicaid, private insurance policies, and various health care programs for people in state custody. Further, anti-discrimination laws (if/where they are in place) are generally not enforced for any of the groups covered by them. Courts have made it very hard to prevail in cases attempting to enforce anti-discrimination laws, and discrimination on the basis of race, disability, and sex, for example, is still commonplace despite being officially illegal. As critiques of deterrence models of criminal punishment have shown elsewhere, hate crime laws do nothing to prevent violence against transgender people but instead focus on mobilizing resources for criminal punishment systems’ response to such violence. Because trans people are frequent targets of criminal punishment sys-

tems and face severe violence at the hands of police and in prisons every day, investment in such a system for solving safety issues actually stands to increase harm and violence.

To get at the limitations of these strategies, this chapter introduces core concepts from Critical Race Theory that explain why rights frameworks that focus on individual discrimination through the “perpetrator perspective” fail and how they obscure structural racism. Using these tools, this chapter illustrates how the US legal system’s conceptualization of racism, particularly the discrimination principle’s reliance on individualism, simultaneously hides and preserves conditions of subjection. Further, it suggests that focusing on trans experiences not addressed by the discrimination/hate crime paradigm can lead us to a more robust vision of what structural violence is, what the law’s role in producing it really looks like, and what role law reform might have in addressing it.

Chapter 3, “Rethinking Transphobia and Power—Beyond a Rights Framework,” introduces an alternative way of thinking about power and systems of meaning and control that departs from traditional legal frameworks of discrimination and equality, and reflects the marginalization being described by trans people. Having analyzed the limitations of what the discrimination doctrine allows us to recognize as subjection (intentional, individual discrimination), and having examined how the shift toward such a limited “formal legal equality” approach is part of a neoliberal abandonment of the broad redistribution demands of social movements, we now uncover a framework for thinking about law and power that better understands the harm facing trans populations. This chapter explains key concepts from critical disability studies, Critical Race Theory, women of color feminism, and from the work of Michel Foucault to describe a way of thinking about power based in an analysis of the distribution of life chances. These interventions provide an entry point into thinking about subjection and control beyond the realm of intentional, individual bias or violence, and instead interrogates empty declarations of “equal opportunity” and “equality” promoted in US law. Using these conceptual tools, we examine the complex vectors leading to high rates of unemployment,<sup>18</sup> homelessness,<sup>19</sup> and imprisonment for trans people, and trace how the administration of life chances through traditional gender categories produces trans vulnerability to premature death.<sup>20</sup> Focusing on key administrative barriers to trans survival, especially access to ID, placement in sex-segregated facilities, and access to

health care, this chapter argues that the best opportunities for legal intervention to combat transphobia are different from what is imagined by the legal equality model. The conceptual tools introduced in this chapter allow us to think in terms of populations and the allocation of resources and life chances, and redirect our attention from discrimination-focused law reforms toward the administrative apparatuses in law that mobilize race, gender, and ability classifications to promote and maximize certain forms of life and ways of being. This analysis allows a critical approach to the role of legal reform in trans resistance, generating a different way to think about law reform work on the whole.

Chapter 4, “Administrating Gender,” applies this analysis to three specific areas of law where the administration of gender norms causes trans people the most trouble: identification, sex segregation, and access to health care. A brief summary of the current state of the law in these realms in the United States reveals the inconsistency of laws and policies in this area between different states and even between different agencies within any given state. These inconsistencies expose how gender is already an unstable category in US law. This instability, when combined with the rigidity of administrative gender enforcement, produces myriad catch-22s that generate insecurity and violence in the lives of trans people, especially in the context of the War on Terror in which inconsistencies in identifying information have become a more significant obstacle to most basic and essential administrative processes. This chapter illustrates how anti-discrimination and hate crime laws fail to target the most urgent legal problems of trans populations. It further conceptualizes how the administrative focus of areas like poverty law, immigration law, and disability law are the proper targets of trans law reform interventions. Administrative systems often appear “neutral,” especially when discrimination has been framed as a problem of individuals with bad intentions who need to be prohibited from their bad acts by law. This chapter reveals how systems like public benefits and housing programs, work eligibility verification programs, criminal and immigration enforcements systems, and health care programs that purport to distribute life chances through neutral and standard criteria are in fact sites of significant harm. Rather than imagining law or government as the protector of trans people from bashers or discriminators, we see that the very administrative systems that determine what populations the law exists to promote and protect are the greatest sources of danger and violence for trans people. Viewing trans marginalization through



an examination of law's administrative functions rather than a focus on whether law declares certain groups equal opens a space for imagining a trans resistance law reform agenda that centralizes race, indigeneity, poverty, immigration, and disability analysis. With this understanding, we can focus less on what the law says about itself and the rights of individuals and more on what impact various legal regimes have on distressed populations.

Chapter 5, "Law Reform and Movement Building," considers the broader question of how to place law reform projects within trans movement building. The most well-funded lesbian and gay rights organizations have been criticized for focusing on law reform goals, with critics arguing that such focus yields only formal legal equality gains that do not reach the most vulnerable targets of homophobia.<sup>21</sup> I argue that there is a place for law reform projects within effective trans resistance, but law reform should not be the central demand of trans resistance. Instead, I suggest four specific roles for law reform projects. First, they can be tools for helping trans people survive in order that they might participate in and lead grassroots organizing work. Because trans people face enormous vulnerability and violence in a variety of legal systems, law reform and individual legal assistance (deportation, eviction, and criminal defense, for example) are vital tools for trans movement organizations in order to support the members they seek to organize. Second, because of the enormous role of harmful administrative and legal apparatuses in trans people's lives, legal help can be an excellent point of politicization for trans people, turning individual experiences of harm into a shared understanding of collective struggle. Often those who come for legal help on a particular issue, if they are invited into membership to do broader work, will learn about experiences different from their own, grow solidarity analysis, and deepen and expand their political understanding and commitment to resistance. Third, law reform campaigns can produce opportunities for organizing that develop new leaders. Finally, law reform strategies can be part of campaigns that aim to expose contradictions in systems of control, sometimes shifting paradigms with that exposure.

All four of these roles point to an organizing theory of change focused on mass mobilization that raises demands that exceed what can be accomplished in the narrow realm of contemporary litigation and policy reform. Demands that are emerging in trans communities, like prison abolition, the elimination of poverty, access to full health care,

and an end to immigration enforcement cannot be conceptualized or won within the realm of US law. For this reason, centralizing law reform demands and the leadership of lawyers only stands to limit the horizons of trans political interventions—and puts trans resistance work at risk of colluding with a neoliberal agenda and with the white supremacy and settler colonialism that US law is founded upon.

Chapter 5, “Law Reform and Movement Building,” also introduces the Four Pillars of Social Justice Infrastructure, a tool developed by the Miami Workers Center (MWC),<sup>22</sup> which articulates the ways that elite strategies like law reform, while components of social movements, undermine the possibility for mass mobilization that produces transformative change when they are centered. Activists and scholars have observed a shift in movements from mass-based grassroots strategies of the 1960s and ’70s to professionalized, funded, nonprofit formations that are dominant today. By “professionalized” I mean to point out that whereas resistance movements have previously been dominated by membership-based grassroots organizations with little staffing, the last few decades have seen an explosion of nonprofits that have changed movement work and expectations to look more like a career track for people with graduate degrees. These new formations are dominated by norms typical of other professions, including unequal pay scales, poor working conditions for people without race, class, and education privilege, and hierarchical decision-making structures. Taking on the institutional norms associated with “professionalism” has decreased the accountability of much movement work. Long term goals of transformative change have been replaced with short term fundraising goals managed by people who get paid to shape the work to match funders’ tastes. This chapter suggests ways that trans activists might avoid common traps inherent to this institutionalization. It looks at some of the major concerns with institutionalization, especially nonprofitization, and explores principles, strategies, and models that racial and economic justice-focused trans organizations are developing to address them.

Trans resistance is emerging in a context of neoliberal politics where the choice to struggle for nothing more than incorporation into the neoliberal order is the most obvious option. We are invited to seek recognition in law that will deliver no actual redistribution of life chances. We are being offered a limited form of visibility, only to the extent that that visibility can prop up existing norms about whose lives matter and whose do not. We are encouraged to fight for inclusion in systems that the most

important movements of our times are trying to dismantle. The paths to “equality” and “success” being modeled by lesbian and gay rights will not reduce the premature death that pervades trans communities, and, in fact, those paths lead to legitimization and expansion of the very systems that most endanger trans lives.

Trans people are told by the law, state agencies, private discriminators, and our families that we are impossible people who cannot exist, cannot be seen, cannot be classified, and cannot fit anywhere. We are told by the better-funded lesbian and gay rights groups, as they continually leave us aside, that we are not politically viable; our lives are not a political possibility that can be conceived. Inside this impossibility, I argue, lies our specific political potential—a potential to formulate demands and strategies to meet those demands that exceed the containment of neoliberal politics. A critical trans politics is emerging that refuses empty promises of “equal opportunity” and “safety” underwritten by settler colonialism, racist, sexist, classist, ableist, and xenophobic imprisonment, and ever-growing wealth disparity. This politics aims to center the concerns and leadership of the most vulnerable and to build transformative change through mobilization. It is reconceptualizing the role of law reform in social movements, acknowledging that legal equality demands are a feature of systemic injustice, not a remedy. It is confronting the harms that come to trans people at the hands of violent systems structured through law itself—not by demanding recognition and inclusion in those systems, but by working to dismantle them while simultaneously supporting those most exposed to their harms. This critical trans politics is part of a larger framework of resistance that must grapple with the complex relationships between power, law, and violence, and the obstacles social movements are facing in the context of neoliberalism.